



1 court. Woodford v. Ngo, 126 S. Ct. 2378, 2382 (2006) (citing Booth v. Churner,  
2 532 U.S. 731, 739 (2001)). “Prisoners must now exhaust all ‘available’ remedies,  
3 not just those that meet federal standards.” Id. Even when the relief sought cannot  
4 be granted by the administrative process, i.e., monetary damages, a prisoner must  
5 still exhaust administrative remedies. Id. at 2382-83 (citing Booth, 532 U.S. at 734).  
6 Finally, the mandatory exhaustion of available administrative remedies is not limited  
7 to suits under § 1983, but to any suit challenging prison conditions. Id. at 2383  
8 (citing Porter v. Nussle, 534 U.S. 516, 524 (2002)).

9 The PLRA exhaustion requirement requires “proper exhaustion” of available  
10 administrative remedies. Id. at 2387. The plain language of the PLRA requires that  
11 prior to filing suit, all “administrative remedies available [must be] exhausted.” 42  
12 U.S.C. § 1997e(a). The Ninth Circuit has interpreted 1997e(a) to mean that an  
13 action *must* be dismissed unless the prisoner exhausted his available administrative  
14 remedies *before* he or she filed suit, even if the prisoner fully exhausts while the suit  
15 is pending. McKinney v. Carey, 311 F.3d 1198, 1199 (9th Cir. 2002).

16 Here, Plaintiff admits that he did not appeal his claims to the highest level of  
17 appeal available to him. Accordingly, the instant complaint is DISMISSED without  
18 prejudice for failure to exhaust his administrative remedies prior to filing this action.  
19 Plaintiff may choose to file a new complaint in a new civil rights action once he has  
20 exhausted his administrative remedies.

21 The Clerk shall terminate all motions (Docket Nos. 2, 4 and 7) and close the  
22 file.

23 IT IS SO ORDERED.

24  
25 DATED: 10/21/08

26   
JEREMY FOGEL  
United States District Judge